

**BEFORE THE FLORIDA
JUDICIAL QUALIFICATIONS COMMISSION**

**INQUIRY CONCERNING A JUDGE,
NO. 01-244 - CHARLES W. COPE**

CASE NO.: SC01-2670

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**MOTION TO STRIKE SPECIAL COUNSEL'S PURPORTED IN LIMINE MOTION
AND TO SEAL CONFIDENTIAL MEDICAL RECORDS OF JUDGE COPE**

COMES NOW Judge Cope, by and through undersigned counsel, and moves this court to strike Special Counsel's In Limine Motion to Exclude Evidence of Treatment for Alcoholism or, in the Alternative, to Compel as a sham. Judge Cope also moves this court to seal Judge Cope's confidential medical records and to prohibit Special Counsel further publication of purported characterizations of the confidential information contained therein. In support of this requested relief, Judge Cope states the following:

Special Counsel Mills has in bad faith and for an improper purpose filed Special Counsel's In Limine Motion to Exclude Evidence of Treatment for Alcoholism or, in the Alternative, to Compel. Special Counsel's bad faith and improper motive is established by the fact that Judge Cope on May 21, 2002, advised through counsel that he would not introduce any evidence of Judge Cope's having sought and received treatment for alcohol dependence. Notwithstanding such advice, Special Counsel Mills has, pursuant to an on-going campaign designed to embarrass Judge Cope into resigning his elected judicial position, filed a purported In Limine Motion to exclude the evidence which Judge Cope advised he would not present. Contained in such sham motion are references to embarrassing and scurrilous statements allegedly contained in Judge Cope's confidential medical records. Given that Judge Cope had already stipulated that no such evidence would be presented, it is clear that the only

purpose of such motion is to embarrass Judge Cope and to prejudice the Hearing Panel with Special Counsel's interpretation of inadmissible and non-credible information allegedly contained in Judge Cope's confidential medical records. Accordingly, Special Counsel's purported In Limine Motion should be stricken as a sham.

In addition to striking the Special Counsel's scandalous purported In Limine Motion, Judge Cope further requests this court to enter an order sealing Judge Cope's medical records and prohibiting Special Counsel from any further publication of any information allegedly contained therein. Judge Cope has never generally waived the confidentiality of his medical records. Such fact is evidenced by the dates of the releases, i.e., before formal charges were filed and also by the statement in the release that the records were not to be released to any other persons or entities. Rather, based on the express representations of Special Counsel as to the confidentiality of the proceedings before the Investigative Panel and the exclusive purpose for which the records would be used by such panel, Judge Cope complied with the Investigative Panel's request that Judge Cope turn over certain medical records for the sole purpose of consideration with respect to mitigation of any charge which might otherwise be filed. By doing so, it was never Judge Cope's intent to waive confidentiality concerning such records for any purpose other than a confidential examination by the Investigative Panel for the isolated purpose of facilitating its determination as to the propriety of initiating formal proceedings against Judge Cope. In fact, since such records were turned over to the Investigative Panel, that Panel pursuant to the cloak of confidentiality has not turned them over to the Hearing Panel. Moreover, Special Counsel has repeatedly verbally and in writing acknowledged such records were irrelevant to this proceeding; and are relevant, if at all, to case number 02-15, a pending investigation by the Investigative Panel into

Judge Cope's asserted "fitness for office." Now contrary to such prior representations, Special Counsel in his latest correspondence falsely asserts that Judge Cope has waived the confidentiality of such documents in "these proceedings." Accordingly, such confidential medical records must be sealed and Special Counsel prohibited from publishing any purported characterizations of the information contained therein.

WHEREFORE Judge Cope respectfully requests this court to strike Special Counsel's purported In Limine Motion to Exclude Evidence of Treatment for Alcoholism or, in the Alternative, to Compel as a sham and to enter an order sealing Judge Cope's confidential medical records and to prohibit Special Counsel from further publishing any purported characterizations of the confidential information contained therein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via Federal Express to: **Judge James R. Jorgenson**, Chair of the Judicial Qualifications Commission Hearing Panel, 3rd District Court of Appeal, 2001 S.W. 117th Avenue, Miami, Florida 33175-1716; **John Beranek, Esq.**, Counsel to the Hearing Panel of the Judicial Qualifications Commission, P.O. Box 391, Tallahassee, Florida 32302; **John S. Mills, Esq.**, Special Counsel, Foley & Laudner, 200 Laura Street, Jacksonville, Florida 32201-0240; **Brooke S. Kennerly**, Executive Director of the

Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; **Thomas C. MacDonald, Jr., Esq.**, General Counsel to the Investigative Panel of the Judicial Qualifications Commission, 100 North Tampa Street, Suite 2100, Tampa, Florida 33602, **Louis Kwall, Esq.**, Co-Counsel for Respondent, 133 North Ft. Harrison Avenue, Clearwater, Florida 33755; this 3rd day of June , 2002.

ROBERT W. MERKLE, ESQ.